

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Z.M., a Person Coming
Under the Juvenile Court Law.

B289992

(Los Angeles County
Super. Ct. Nos. DK22149/
DK22149A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

S.L.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County, Frank J. Menetrez, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court
of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles,
Assistant County Counsel, David Michael Miller, Deputy County
Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother Sonya L. (mother) challenges a juvenile court order under Welfare and Institutions Code section 364¹ awarding sole physical and legal custody of child Z. to Z.'s father (father), and requiring visits by mother to be monitored. Mother's argument on appeal that she substantially complied with the case plan does not demonstrate that the juvenile court erred. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Initial incident

Z., born in August 2013, came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) and the Pasadena Police Department on March 14, 2017, after he had been admitted to the pediatric intensive care unit at Huntington Memorial Hospital with a skull fracture. The doctor described Z. as high-functioning autistic. Maternal grandmother reported that while Z. was in her care the day before, he tumbled out of a shopping cart and hit his head on the asphalt. Maternal grandmother did not realize Z. was injured, because he only whimpered a little at the time. At home that evening, mother gave Z. a bath, read to him, and put him to bed. When Z. woke up in the early morning hours and vomited, mother took Z. to the emergency department to be evaluated for injury.

¹All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The pediatrician treating Z. observed that mother was acting “erratic.” Mother told staff she was not feeling well; she thought she might be pregnant and requested a blood test. The test included a drug screening, and mother tested positive for methamphetamine. Hospital staff apparently contacted DCFS. Mother claimed the drug test result was a “false positive” result due to recently prescribed psychotropic medications. The pediatrician told the social worker and investigating police officer that mother’s medications likely would not cause a false positive result for methamphetamine, but a hospital lab technician reported that a false positive could be caused by the medications.

Maternal grandmother told the social worker that mother had a history of drug abuse, as well as a history of mental health issues including depression. Maternal grandmother said she had not witnessed mother acting erratically, but “stated she is unable to differentiate between [mother] acting erratically or behaving normally since mother’s usual temperament is ‘weird.’” Maternal grandmother also said that mother had “finished six weeks of drug counseling as a teenager” and had issues with depression at age 15. (At the time of this incident, mother was in her early thirties.) When the police officer asked maternal grandmother about mother’s prior arrest for driving under the influence of methamphetamine, maternal grandmother became upset because “mother had told her it was a ‘regular DUI’ thus alcohol related.”²

Hospital staff expressed concern that mother did not know how Z. was injured, and mother told the social worker that she

²A background check included in the record indicated that mother had a DUI arrest and a reckless driving conviction in 2011. No additional information regarding the arrest or conviction is in the record on appeal.

had been confused because Z. was with maternal grandmother when he was injured. Mother told the social worker that she was not addicted to methamphetamine, but said, “I can be addicted to anything. I’ve been addicted to alcohol, coffee, and now sugar. Meth isn’t my problem.” She also said, “[W]hat I do on my personal time doesn’t affect [Z.] and why Children’s Services should be involved [*sic*]. It’s only affecting me not him.” The social worker asked if they could schedule a drug test for the following day to determine whether it was a false positive due to mother’s medications, and mother said, “Well no, I don’t even think I’d pass one tomorrow either.” The hospital social worker reported that mother said she used marijuana about a week before the incident, and she had not used methamphetamine since August 2016.

Later the same day, the DCFS social worker visited mother at maternal grandmother’s home, where she and Z. lived. The home was clean and free of safety hazards. Mother told the social worker that she uses drugs recreationally, “but she only uses drugs when the child is with [his] father.” Mother’s boyfriend told the social worker that mother does not use drugs around him.

The social worker visited Z.’s father (father) the following day at his home, where he lived with his mother, paternal grandmother. He had “seen the child consistently almost every weekend” since he and mother separated. The home had two bedrooms, and father slept on the couch when Z. stayed at the home. Father said there was no family court order in place; his custody arrangement with mother was informal. Father typically picked Z. up from school on Friday afternoons and returned him to mother on Sundays. Father said that he would have no

problem getting Z. to school and his speech therapy classes if DCFS placed Z. with him. Father also said he did not have any concerns about Z. living with mother. Father later called the social worker to clarify that when he made that statement, he had not been aware that mother had tested positive for methamphetamine at the hospital.

Z. was discharged from the hospital on March 16, 2017. The social worker told mother that DCFS was pursuing a removal order and wanted Z. to be released to father. Mother appeared upset but agreed to allow Z. to go home with father. Mother did not think DCFS should be involved because Z. was not “abused.” On March 17, 2017, father told the social worker that in August 2016, he, maternal grandmother, and other relatives “had an intervention” with mother after father found methamphetamine in her possession. Father said that if mother were using drugs, Z. should not be in her care.

In the detention report, DCFS recommended that Z. be detained and placed with father, stating that mother “has a history of unresolved mental health issues, specifically a diagnosis of Depression, and current substance abuse endangers the child’s safety and places him at risk of harm. . . . [R]ecent positive toxicology results; self-disclosed addictive behavior; and ongoing minimization and denial of her ongoing drug use and failure to understand the possible repercussions of her continued illicit substance use places the 3 year old child, [Z.,] at risk of harm.” DCFS recommended that mother have monitored visitation.

On March 22, 2017, DCFS filed a juvenile dependency petition under section 300, subdivision (b) for failure to protect due to mother’s “unresolved history of substance abuse” (count b-

1)³ and her “mental and emotional problems,” including her failure to take psychotropic medications (count b-2). DCFS asserted that these two issues placed Z. at risk of harm.

At the detention hearing on March 22, 2017, the juvenile court found a prima facie case under section 300, subdivision (b), and detained Z. from mother. The court stated that father was non-offending, and ordered that Z. be placed with him. The court ordered weekly random drug testing and monitored visits for mother.

B. Jurisdiction hearing

A jurisdiction/disposition report dated April 19, 2017 stated that Z. was living with father. Z. was current in all his medical checkups and immunizations, had been diagnosed with autism in 2016, and had allergies that could lead to asthma. He had speech and language delays, and speech therapy had been recommended. He showed no additional signs of injury from the head trauma.

A social worker interviewed mother on March 30, 2017. Mother said she did “a drug program” in 2011 relating to a driving incident in which she hit a parked car. Mother stated, “I have no history with meth or cocaine. I haven’t used cocaine for

³This was the count as it was later amended; the original count does not appear to be in the record on appeal. A jurisdiction/disposition report in the record states that the allegations were that mother “has a substance abuse history including methamphetamines, cocaine, and marijuana and is a current user of amphetamines, methamphetamines, and marijuana which renders the mother incapable of providing regular care and supervision of the child. . . . On prior occasions, mother was under the influence of illicit drugs while the child was in mother’s care and supervision.”

years and meth for months.” Mother said she had taken Z. to all of his medical and school appointments, and she had gotten him into an early intervention program and services at the regional center. Mother said the positive drug test result was a result of prescribed medications, and Z. had never been with her while she was using illicit drugs. Mother also stated that she had suffered from depression her whole life, but stopped taking medication as a teenager. Mother said she attempted suicide at age 15, and “had a breakdown two times” at age 17. She had recently begun taking medication to address her depression and anxiety. Mother said, “All I want is for my son to be healthy and happy and not have DCFS involved.” She said father was “a weekend dad,” and she thought that father “wants [Z.] for the money.”

Mother said she had initiated a family law action in December 2016 to establish custody of Z., and father did not respond. The record includes a proof of service and notice that a default hearing was set for April 7, 2017, but no additional documents from that case.

Father said he and mother separated in September 2014. He found drugs in mother’s belongings in August 2016, but he had never seen her taking drugs. Father said mother had emotional issues, in that “[o]ne minute she can be lucid and show no emotion and then the next minute go 180 degrees and be angry and bitter, and then [be] calm again.” Father was not aware that mother was taking prescription medication. He stated that Z.’s behavior had improved in his care, and he was concerned about placing Z. in mother’s care due to possible drug use. Father also said that mother “has been a deep and concerned advocate for [Z.] and she has gotten him all of the services he needed. She has great involvement and commitment

to [Z.]. . . . Ultimately he is best with me but I want him to be able to visit with her.”

Paternal grandmother stated that mother had screamed at father that he was a bad parent, while in the driveway of father’s home with Z. in the car. She also said that mother had screamed at maternal grandmother at a family gathering when maternal grandmother “had put the wrong thing on the dinner table.” Paternal grandmother characterized mother’s behavior as “abusive to” maternal grandmother.

Maternal grandmother said that mother has a “history of not being honest with me about” drug use. After the intervention in August 2016, maternal grandmother said mother could live with her as long as she remained clean, so they bought home drug tests, and the results were “always clean.” Maternal grandmother said that mother took Sudafed for a nasal infection and mother “said she would test positive being on that medication. Now she is on Wellbutrin and said she would also test positive being on that.” Maternal grandmother also said that mother “has always had erratic behavior,” and she recently started taking medication again. Maternal grandmother said, “I am confident [Z.] was never around” mother while she was using drugs “because she protected him”; maternal grandmother also noted that mother “took very good care of” Z., and “is devoted to him.” Maternal grandmother said mother and Z. “have a very tight bond,” and, “They should be reunited as long as she’s sober.” Maternal grandmother also addressed mother’s mental health history, stating that it “happened a long time ago—fifteen years ago,” and “I believe it was really drama” rather than serious mental health problems.

The jurisdiction/disposition report noted that mother had two, three-hour visits with Z. per week “in the Pasadena DCFS office.” However, the report includes no information about the visits, such as descriptions of mother’s interactions with Z. or Z.’s reaction to visiting with mother. In the “family strengths” section of the report, DCFS stated that “Mother has been a strong advocate for her son,” and “Mother has maternal relatives’ support.” The report also said, “There are many examples of mother’s total allegiance to and care of her son.” Z.’s pediatrician noted that mother had been the only parent to take Z. to appointments. Z. was born without any drugs in his system. On March 14, 2017, “mother was approved to be an In-Home Services provider” for Z. The report stated, “Even though mother has been exemplary in her care of [Z.], DCFS is concerned about mother’s use of meth due to her testing positive for the drug. Because of [Z.’s] young age and special needs, mother needs to be able to show is in not [*sic*] under the influence of any drugs and that she is remaining sober.”

Included with the jurisdiction/disposition report is a March 21, 2017 letter from a psychologist stating that mother is “in treatment with me,” she “does not pose a danger to herself and others,” and she “is taking medications . . . to help herself.” Also included is a printed list of prescriptions for mother, including bupropion, and printed articles stating that bupropion can cause a drug test result to be positive for amphetamine. Letters regarding Z.’s care indicate that he had significant speech and vocabulary delays and was participating in therapy; mother and father both actively participated in Z.’s programs, including attending weekly parent meetings and having home consultations. A letter from a maternal aunt (who also identified

herself as a school psychologist) stated that Z. has special needs, including autism and multiple allergies, and mother “has been diligent about ensuring that [Z.] remains healthy” by taking him to doctors’ appointments and being “very conscientious about his restricted diet.” The aunt called mother “a tireless advocate to get [Z.] the services he needs to make progress.”

An undated letter from Z.’s preschool special education teacher was also included. The teacher noted several concerns about mother’s behavior in late 2016 and early 2017, including bringing Z. late to school; picking Z. up late and stating, “I could pick him up, I just didn’t want to”; asking the occupational therapist if she smoked marijuana and if she wanted to come to mother’s house; and criticizing what father put in Z.’s lunch. The teacher also stated, “It is also important to note the decrease in problem behavior since [Z.] has been under the primary care of [father]. Since his return after his injury, [Z.] has been on-time to school, dressed appropriately for the weather, has complied with staff and teacher prompts, and has not engaged in the self-injurious behaviors previously noted in his Individualized Education Plan, IEP.”

The adjudication hearing was held on April 19, 2017; the file on appeal does not include a reporter’s transcript from the hearing. According to the minute order, the court struck count b-2 of the petition regarding mental health issues. Mother pled no contest to count b-1 of the petition as amended, which stated that mother “has an unresolved history of substance use and is a recent substance user. Such substance use can interfere with providing regular care of [a] young child. Mother’s unresolved history of substance use places the child at risk of harm.” The court ordered mother to enroll in a substance abuse program with

weekly testing and participate in individual counseling; it ordered family preservation services for father. The court's order stated that both parents "are to share physical custody equally with respect to the child." The court set a six-month review hearing.

C. Section 387 petition

On September 5, 2017, DCFS filed a section 387 supplemental petition. It alleged that mother had positive toxicology screens for amphetamine and methamphetamine, and mother's "failure to comply with Juvenile Court Orders . . . endangers the child's physical health and safety and places the child at risk of serious physical harm and damage."

A detention report dated September 5, 2017 stated that mother's home had been approved by DCFS, and mother and Z. had been having unmonitored visits. Mother filled a prescription for attention deficit hyperactivity disorder (ADHD) medication on June 14, 2017, and thereafter began testing positive for amphetamine. Mother also tested positive for methamphetamine on June 17, 23, and 30, and had a missed test on July 5. After the social worker received the positive test results she consulted Pacific Toxicology, the testing service, which told the social worker that mother's prescription medication could not explain a positive test for methamphetamine. The social worker informed mother and father on June 28, 2017 that mother's "visits with [Z.] were restricted because of her positive methamphetamine test."

The detention report stated that the social worker, "who had worked with the Department for less than two years, was unaware that restricting [mother's] visits may arguably have been tantamount to a detention." The social worker "followed up with this restriction by seeking, and obtaining, a warrant for

detention of [Z.] from [mother] based on mother's methamphetamine use." However, "when the warrant was granted," one social worker was on vacation and another was on sick leave, thus "[s]erving the warrant and notifying [mother] of the commensurate detention did not take place. When DCFS realized on 8/31/17 the issue had been neglected, it immediately moved to call in a detention and schedule a detention hearing pursuant to WIC Section 387."

The detention report stated that along with the tests that were positive for methamphetamine, mother "has regularly tested positive for amphetamines for ADHD. [The social worker] suggested to [mother] that she should consider discussing with her psychiatrist an alternative drug to amphetamines, since it would appear to impair her ability to recover from methamphetamine use." The report also stated, "DCFS believes [mother] routinely lies and minimizes her drug use," mother "is in significant denial about the nature and extent of her drug use," and mother "has a drug addiction problem which she consistently denies, minimizes, or lies about." The detention report noted that mother's drug program was "considering dismissing [mother] from the program for failing to take responsibility for drug use," and said that mother "instead focuses on the father's behavior." The report stated that mother "needs to acknowledge her role in the facts leading to this case before she can begin to take protective measures for her son." The report stated that according to a risk assessment on September 1, 2017, DCFS determined that "the risk was high," and also that a "[r]isk tool assessment shows risk level is very high and minor is unsafe."

The detention report includes information about mother's drug tests, but it does not include any information about mother's

visitation with Z. It states that mother tested “positive for a 3-week period . . . while she had unmonitored access to” Z. The report includes no information as to whether mother and Z. had any visits in this time period, but nevertheless states that “[s]uch conduct by the mother creates an unhealthy environment for [Z.] and places him at risk of abuse and neglect.” Moreover, although mother’s visits purportedly had been monitored since the end of June 2017, and the detention report was dated September 6, 2017, there was no information in the detention report about mother’s visits with Z.⁴

At a hearing on September 6, 2017, mother’s counsel stated that mother did not deny that she relapsed and used methamphetamine for several days in a row in June 2017, but stated that mother “was attempting to energize herself” so she could work to pay her rent. Mother’s counsel said that mother had not used methamphetamine since then, as evidenced by her drug test results. Counsel also said that as of February 2017, mother had been diagnosed with bipolar disorder and attention deficit disorder. The positive amphetamine test result was due to mother’s prescription for generic Adderall. Mother’s counsel asserted that because nothing had changed since mother got back on track after her brief June relapse, there was no need to change visitation.

The court asked mother how many times she had visited Z. since the end of June; mother said four times, once in June, once in July, and twice in August. Father said that in between those

⁴A separate service log dated August 17, 2017, which was apparently not provided to the court with the detention report, noted that the social worker monitored mother’s visit with Z. and mother “is good with [Z.]”

times, mother had not contacted father or Z. Counsel for Z. argued that mother “goes back and forth between admitting that she’s a drug user and denying that she’s a drug user.” Z.’s counsel asked the court to require monitored visitation.

The juvenile court criticized DCFS for its procedural missteps by limiting visitation without a court order and failing to serve mother, and set an order to show cause so that the social worker and supervisor could “explain to the court why they believe that they have the authority to change these visits and change the court’s orders.” The court said, “[T]his is stale information to the court because this all happened way back at the end of June.”

Turning to mother’s positive methamphetamine tests, the court said, “This child is four years old, and I am concerned for the safety of this child.” The court acknowledged that DCFS had to make a prima facie showing that Z. was at risk of harm, and stated, “I do have that information. That is before me.” The court ordered that mother’s visits be monitored. Once mother had completed five consecutive clean drug tests and presented evidence that she was participating in her drug program, unmonitored visitation could resume. The court acknowledged that mother’s tests may be positive for amphetamine, because “it appears there’s a prescription for that.” The court set an adjudication hearing.

D. Disposition

The disposition report, dated October 4, 2017, focused almost exclusively on mother’s actions and contained very little information about Z. The section of the report titled “visitation” stated that “[p]ursuant to the court’s order dated 09/06/17, DCFS verified [that mother] tested five times only for amphetamines,

on [§] 8/18/17 [§] 8/25/17 [§] 9/2/17 [§] 9/12/17 [§] [a]nd [§] 9/19/17. [§] DCFS therefore unmonitored her visits on 09/26/17.” The section titled “child’s safety in home” states, in full, that mother “has a substance abuse problem as evidenced by the numerous positive toxicology results and not acknowledging she has a problem. DCFS believes [Z.] will not be safe with [mother] as long as she continues to deny she has a problem with methamphetamine use. [Z.] may be at risk of physical and emotional harm.” No information is included about the safety of mother’s home or mother’s interactions with Z. during visits. In the section of the report about the “mental & emotional status” of the child, it recounts that Z. was assessed for autism and developmental delays in 2016, before the DCFS case was initiated. According to the report, Z. had recently had an annual physical examination, but was not current as to dental care.

The report stated that mother’s “consistent denial of meth use; whether last August, this March or in June, which denial persists to this day, remains the key problem requiring intervention.” In an interview on September 22, 2017, mother told a social worker that she had provided DCFS with her prescriptions to explain all positive drug tests, and she “[d]eclined to comment on her meth use in June.” Mother said she had a diagnosis of bipolar disorder and ADHD, and was addressing her mental health issues with a therapist. Mother complained that she never received any family preservation services, and the report notes, “These have been wait-listed for new families for months.”

Mother had not signed consent forms to allow her drug program, psychiatrist, or therapist to share information with DCFS, and “DCFS attempted face-to-face contact with [mother]

but she refused to meet.” A counselor in mother’s drug program told a social worker that mother “continues to refuse to acknowledge having a problem with methamphetamine use, and focuses not on herself but only outward . . . mainly pertaining to dissatisfaction with the parenting provided by” father. The counselor suggested that a program that takes mother’s mental health issues into account might be more beneficial to mother.

The “assessment/evaluation” section of the disposition report focused almost exclusively on mother’s actions. It stated, “Since the first detention mother missed three drug tests and tested positive for methamphetamines and amphetamines on 11 times [*sic*].” It also said that mother “is in denial of her drug addiction and in [*sic*] multiple occasions has refused to accept that she has a drug problem; however, has failed to drug test and in numerous times tested positive for amphetamines and methamphetamines.” The report says nothing about whether mother’s home was appropriate for Z. to visit, whether mother was appropriate in her interactions with Z., or whether mother was involved with Z.’s medical and educational services.

Mother was not present at the adjudication hearing on October 4, 2017 “due to a job search.” The reporter’s transcript is not in the record on appeal. The court sustained the section 387 petition. The court ordered that mother’s visitation be monitored, even though the disposition report stated that mother’s visits were no longer monitored due to her clean drug tests. The court again ordered mother to participate in individual counseling, drug counseling, parenting classes, and drug testing. The court also ordered mother to “sign any form necessary to release information to DCFS with regard to all

court-ordered counseling.” The court set a review hearing for April 2018.

E. Judicial review hearing and exit order

A status review report dated April 4, 2018 (filed March 21, 2018) stated that DCFS recommended that the court terminate services for mother, terminate jurisdiction, grant father sole physical and legal custody, and grant monitored visitation for mother.

The section of the report titled “current family circumstances” stated that father had gotten married in February 2018, and Z. lived with father and his new wife. Father had “cooperated” with the social workers in “ensuring that child [Z.] is available for monthly visits.” The only information in the report regarding the social worker’s observation of Z. states in full, “Per [the social worker’s] observation, [Z.] is well bonded with father, and maternal grandmother, [name]. He is a happy and smart kid. [Z.] is aware of his surrounds [*sic*]. He is able to communicate his feels [*sic*] and thoughts.” Father said that he does not want to keep Z. away from mother “as long as she is sober and not under the influence of any illegal substances.” A new IEP was completed on September 26, 2017; the report does not state whether either parent participated.

The report stated that mother was in partial compliance with the case plan; she had participated in a drug treatment program, parenting classes, individual counseling, and random drug testing, but she had not completed any programs. She had attended 40 NA/AA/CA meetings, and 16 of 17 parenting classes. Mother had been dismissed from her previous drug program in November 2017, and a counselor and the director told the social worker that they “felt mother needed more assistance in

addressing her mental health concerns. Per program director, mother has a difficult time during group sessions and often becomes a distraction to others in the group. Mother constantly needs redirection to stay on topic.” A letter from the program director stated that mother had participated in random drug testing, and although she tested positive for amphetamine and benzodiazepine while in treatment, she “provided staff with proof of prescriptions.” Mother was discharged from the program because after she had been warned, she continued to “interrupt group counseling sessions with comments not related to group material,” she made “concerning comments” in a group counseling session, and she was “being erratic and disrupting the group.” The letter noted that mother had tested positive for methamphetamine on June 15, 2017.

DCFS noted that from September 2017 to March 2018, mother’s drug tests yielded both negative and positive results for amphetamine, with five no-shows between the end of September and the end of December 2017. The social worker stated in the report that mother “has not acknowledged her part in why [the] family has an open case with the department. Mother continues to blame others for why child is not in her care.”

The report stated that mother was scheduled to have monitored visits with Z. once a week, for two hours each, and a maternal aunt monitored the visits. However, the visits were “inconsistent due to mother’s work schedule and monitor’s work schedule.” The report does not include information about the actual dates or frequency of visits. It appears that the social worker had not observed any visits, as there is no information suggesting direct observations of any interactions between mother and Z. However, the report states that according to the

visitation monitor, there was one incident in which mother got upset when Z. expressed that he did not like the smell of the hot dogs mother prepared for dinner. “This caused mother to be upset,” and she “started asking [Z.] if he liked father’s girlfriend more than her.” The monitor “tried to redirect the conversations and removed [Z.] from the situation until mother can [sic] calm herself down.” Mother “was able to calm down and enjoy the rest of the visit by going to the park.” The social worker “tried working with mother in adding another day to her visit [sic] but mother could not provide CSW another day due to mother’s work not having a set schedule.”

Mother told the social worker that she felt defeated by everything that had happened in the case, and she loves Z. but “believes he doesn’t have the same connection with her as he did prior to the case opening.” Mother stated that when she used illicit drugs before, Z. was not in her care and she did not see any harm in using drugs when Z. was not with her.

The report stated that “Mother does not take ownership of her actions that led to the child being detained from her care but rather blame [sic] maternal grandmother.” Mother asked the social worker about giving up her rights to Z. to get the DCFS case to end. DCFS stated that “the risk level continues to be high for abuse by the mother.” Father was meeting Z.’s needs, and “continues to be cooperative with the Department.” A “case plan update” dated March 20, 2018 stated that DCFS recommended that Z. remain with father, and mother “does not understand the negative effects of her continued drug use. Mother states that she only uses drugs recreationally.”

A last-minute information dated April 4, 2018 stated that mother told the social worker that she had enrolled in another

drug treatment program. The social worker was unable to get information directly from the program, because mother had not signed a release for information, despite the court's order. An attached letter from the program director, dated March 28, 2018, stated that mother had enrolled in the program on March 1. Mother was required to attend the program three days a week for a minimum of six months, and was required to participate in individual counseling, drug education classes, parenting classes, and an anger management program. She was also required to submit to drug and alcohol tests, and the results of these tests were negative. In individual counseling, mother "states that she is willing to examine the past issues" that can be "the source[s] of depression, anger, and resentment."

A last-minute information filed May 3, 2018 stated that the social worker had not spoken with mother's psychiatrist about mother's prescriptions because mother had not provided a release for that information. Father had reported that "[i]n the last couple of months . . . mother has only visited child twice in a month, with visits lasting up to 3 hours each visit." The last-minute information also reported that according to father, mother had "cut one of the visits short due to child requesting for Apple juice and mother not have [*sic*] Apple juice in her home." In April 2018 mother had been drug tested four times, and tested "positive for Amphetamines on 4/11/18 and 5/1/18. Tested negative on 4/28/18. Missed test on 4/17/18."

At the contested judicial review (§ 364) hearing on May 9, 2018, mother presented another letter from her drug program director, which stated that mother had random urine and breath tests for drugs and alcohol, and "the results are negative." Mother's counsel requested joint physical and legal custody, and

stated that mother wanted to be a part of Z.'s life, including medical and educational decisions. Counsel for Z., father, and DCFS each requested sole physical and legal custody for father, with monitored visitation by mother. Z.'s counsel expressed concerns about "mother's unaddressed mental health" issues, evidenced by her dismissal from her previous drug program and the incident in which mother got upset after Z. made a comment about the smell of food while mother was cooking. Father's counsel stated that "mother has not addressed the issues that brought this case into court," and her visits with Z. were sporadic. Counsel for DCFS asserted that mother had not "taken ownership and responsibility for her actions," and there was "nothing indicating that mother has really addressed mental health issues." DCFS stated that the section 300 and 387 petitions had been sustained, "and the department's position is that [mother's drug use] remains an unresolved issue for mother."

The court noted that "there are positive tests from April 11 and May 1 and a missed test April 17." The court stated that DCFS's position "is fully supported by the record," but did not elaborate. The court found that the conditions warranting jurisdiction no longer existed, and terminated jurisdiction. The court issued a juvenile custody order granting sole physical and legal custody to father, with monitored visits for mother. The court's stated reason was that mother had not completed and had not made substantial progress in her drug abuse program, parenting classes, or individual counseling. At the end of the hearing, the court said to mother, "So, ma'am, I hope that you remain in your programs and make progress with them and address all these issues, and when you do, you can go to family

court and get the custody order modified, but, based on the evidence I have today, I think the recommendation from the department is appropriate.”

Mother timely appealed.

DISCUSSION

A. Legal standards

Mother contends that the juvenile court erred by awarding sole physical and legal custody of Z. to father, with monitored visitation for mother. A juvenile court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” (§ 362, subd. (a).) “The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion.” (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.) “We review an order setting visitation terms for abuse of discretion. [Citations.] We will not disturb the order unless the trial court made an arbitrary, capricious, or patently absurd determination.” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

When the juvenile court terminates jurisdiction in a dependency case, it may issue an order for custody and visitation. (§ 362.4; *In re Chantal S.* (1996) 13 Cal.4th 196, 202-203.) This so-called “exit order” is transferred to the family court and remains in effect until modified or terminated by the family court. (§ 362.4; *Chantal S.*, *supra*, 13 Cal.4th at p. 203; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.)

“When making a custody determination in any dependency case, the court’s focus and primary consideration must always be the best interests of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) Thus, “the court’s power under section

362.4 require[s] it to make an informed decision concerning the best interests of the child.” (*In re John W.* (1996) 41 Cal.App.4th 961, 972.)

B. Analysis

We find this case concerning due to its heavy focus on mother’s actions, with comparatively little attention to Z.’s best interests. Nonetheless, mother has not carried her burden on appeal to show that the juvenile court abused its discretion in fashioning the exit order here.

It was clear at the beginning of the case that Z. was well cared for by mother. Z. had special needs including autism and extensive allergies, and mother addressed these needs appropriately by having Z. assessed, having an IEP created, and obtaining various services to assist Z.’s development. Mother had been “approved to be an In-Home Services provider” for Z. Father characterized mother as “a deep and concerned advocate for [Z.]” and said she had “great involvement and commitment to [Z.]” Maternal grandmother, a middle school teacher, said mother “took very good care of” Z., and “is devoted to him.” A maternal aunt called mother “a tireless advocate to get [Z.] the services he needs to make progress.” DCFS noted in its jurisdiction/disposition report that “Mother has been a strong advocate for her son,” and, “There are many examples of mother’s total allegiance to and care of her son.” DCFS also said that “mother has been exemplary in her care of [Z.]”

Nonetheless, DCFS detained Z. on the basis that mother tested positive for drugs—in a test that may or may not have had a “false positive” from prescription medication. Even assuming it was a truly positive test, the law is clear that drug use, without more, is not sufficient to establish juvenile court jurisdiction.

(See, e.g., *In re Drake M.* (2012) 211 Cal.App.4th 754, 764 [“[W]ithout more, the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found.”]; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452 [“the mere use of marijuana by a parent will not support a finding of risk to minors”]; *In re David M.* (2005) 134 Cal.App.4th 822, 830 [jurisdiction under § 300, subd. (b) is not warranted in the absence of evidence of a specific, defined risk of harm to a child resulting from a parent’s substance abuse]; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346 [under section 366.22, where mother was otherwise able to care for her children, evidence of drug use alone did not justify a finding that the children’s return to mother would create a substantial risk of detriment to the physical or emotional well-being of the children].)

However, mother pled no contest to the amended allegations in the petition. “A plea of ‘no contest’ to allegations under section 300 at a jurisdiction hearing admits all matters essential to the court’s jurisdiction over the minor.” (*In re Troy Z.* (1992) 3 Cal.4th 1170, 1181.) Thus, mother admitted that her “unresolved history of substance abuse places the child at risk of harm.”

It is undisputed that mother relapsed and used methamphetamine in June 2017, as evidenced by her drug test results and mother’s counsel’s admission at the September 6, 2017 hearing. While we certainly do not condone recreational use of illegal substances, we note that there was no suggestion in the record that mother was with Z. while using illicit drugs or while under the influence of illicit drugs. Instead, in the section 387 petition, DCFS alleged that mother was a danger to Z. because

she had “access” to him at this time. At the hearing in September 2017, mother told the court that she had visited with Z. only once in June. There was no indication whether the visit occurred in early June, when mother’s tests were acceptable, or in late June, when they were not.

In fact, the record as a whole contains little information about mother’s interactions with Z. over the course of this case. For example, mother had monitored visitation for significant periods, yet the record contains almost no information about mother’s interactions with Z. One service log entry states that a social worker observed mother’s visit in August 2017 and mother was “good with” Z., but this information was not included in any DCFS report. The only report about any specific interaction between mother and Z. was based on information from the maternal aunt who was monitoring mother’s visitation. Moreover, the reports include almost no information about the social worker’s direct observations of Z. Instead, each report by DCFS focuses largely on mother’s behavior and drug tests.

These shortcomings of the record cast some doubt upon the factual basis of the court’s custody ruling. For example, the court awarded sole legal custody to father, but it is not clear that the court had sufficient evidence to support a finding that this was in Z.’s best interest. Legal custody involves “the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.” (Fam. Code, § 3006.). The record makes clear that before the juvenile court case was initiated, mother had expertly handled Z.’s complicated health and education needs. Nothing in the record suggests that mother’s abilities in this capacity diminished over the course of this case. On the other hand, there is no evidence that mother

remained capable and engaged in Z.'s continuing education and medical care.⁵ As the court was required to consider the best interests of Z. in fashioning a custody order, and the record contains almost no information about the parents' involvement in services for Z., it is not clear what evidence the court relied upon in awarding sole legal custody to father.⁶

However, mother does not separately challenge the legal custody, physical custody, or visitation aspects of the order. Nor does she assert that the record contains insufficient evidence to support the court's ruling. Instead, she contends that the juvenile court's order was erroneous because mother "had sufficiently complied with the case plan to warrant a shared custody agreement, or, at a minimum, unmonitored visits." She argues that she "substantially complied with her court-ordered case plan" by attending group and individual counseling, a drug program, and parenting classes, and she had "committed to the process necessary for a drug free life." In her reply brief, mother asserts that her "clean tests, sobriety and participation in programs all demonstrate the error in the juvenile court's order."

The focus on mother's actions, without consideration of Z.'s best interests, is not the appropriate focus for an exit order. "[A]

⁵ The single reference that Z. had improved in school while in father's care came from an undated letter from a preschool teacher, which discussed incidents in January 2017, over a year before the exit order at issue.

⁶ The court gave no explanation for its ruling except to say that DCFS's position was "fully supported by the record." Such a ruling is not ideal, but "[t]he Welfare and Institutions Code does not require a specific statement of reasons be given when making a custody order." (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 713.)

parent's compliance with the case plan is not a guarantee the child will be returned to the parent." (*In re Jacob P.* (2007) 157 Cal.App.4th 819, 830.) A finding that a parent complied with the case plan does not mean that it is in the child's best interests to be returned to the parent, because that "is a separate question." (*Id.* at p. 831.) And although the court terminated jurisdiction, "a finding that the parent from whom custody was removed no longer poses a risk of detriment or that the parent whose custody has been subject to supervision no longer requires supervision is relevant to, but not necessarily determinative of, the best interests of the child." (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.)

Even if mother's compliance with the case plan were a valid basis for challenging the court's order, mother's argument is not well supported by the record. In May 2018, father said that mother's visits with Z. were infrequent and sporadic, and although DCFS tried to work with mother to schedule an additional day for visitation, mother said her work schedule would not allow it. In addition, mother was dismissed from her court-ordered drug program in November 2017 for disrupting group sessions, after mother had completed 16 of 17 parenting classes. Mother also had multiple missed drug tests. Mother refused to provide consent forms, despite a court order, which would have allowed DCFS to speak with mother's psychiatrist or therapist. Similarly, mother had not signed a release form for the drug treatment program she entered in March 2018. Thus, it is not clear that mother was compliant with the case plan.

Mother's sole focus on her partial compliance with the case plan therefore does not demonstrate that the juvenile court abused its discretion in fashioning its custody order. Mother does

not otherwise assert that the trial court abused its discretion. Mother therefore has not met her burden on appeal to demonstrate that the trial court abused its discretion in fashioning the exit order. (See *In re Sade C.* (1996) 13 Cal.4th 952, 994 [“An appealed-from judgment or order is presumed correct,” and to challenge it, the appellant “must raise claims of reversible error or other defect . . . and ‘present argument and authority on each point made.’”].)

“The fundamental premise of dependency law is to serve the best interests of the dependent child.” (*In re Samuel G.* (2009) 174 Cal.App.4th 502, 510.) The intensive focus on mother’s actions in this case, in contrast to the sparse recent information about Z.’s well-being, living situation, progress in school, or safety in relation to mother, suggests that the parties here may not have focused on (or at least failed to clearly articulate) that fundamental objective. Nevertheless, mother has not asserted on appeal that the court abused its discretion by failing to take Z.’s best interest into account. We therefore affirm.

DISPOSITION

Affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

CURREY, J.